In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 917

WARDE H. ERWIN AND MARY LOU ERWIN, PETITIONERS

v.

RALPH C. GRANQUIST, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The petition for certiorari in this case raises the question whether Section 58 of the Internal Revenue Code of 1939, which requires the filing of a declaration of estimated tax, is constitutional. Mandatory additions to tax for failure to file such a declaration were assessed against taxpayers, pursuant to Section 294 (d) (1) (A) of the Internal Revenue Code of 1939. The taxpayers did not file the required declaration and did not claim that a declaration was not required by the statute or that their failure to file was due to reasonable cause rather than wilful neglect.[1] The

[1] The District Court found that "there was no reasonable cause", and petitioners agree (Pet. 8). Through some error the word "no" was omitted from the District Court's findings as printed in the Petition (p. 26).

District Court (Pet. 24–28) and the Court of Appeals (Pet. 28–30) both held that Section 58 is a valid exercise of the taxing power.

That holding is in accord with *Walker* v. *United States*, 240 F. 2d 601 (C. A. 5), certiorari denied, 354 U. S. 939, in which one of the present taxpayers, as *amicus curiae*, made substantially the same arguments as are made here. As stated in the brief in opposition in the *Walker* case (No. 1033, October Term, 1956), there is no substantial doubt as to the constitutionality of the provisions relating to the estimated tax. Those provisions are part of the Congressional plan to put taxpayers on a pay-as-you-go basis; they were intended to supplement the withholding provisions of the Code by requiring current payment of tax on that income on which the tax could not, as a practical matter, be collected by withholding at the source. See H. Rep. No. 401, 78th Cong., 1st Sess., pp. 11–13, 32–39 (1943 Cum. Bull. 1283, 1290–1291, 1307–1312); S. Rep. No. 221, 78th Cong., 1st Sess., pp. 8–10, 35–43 (1943 Cum. Bull. 1314, 1319–1321, 1340–1346).

The provisions for withholding income tax at the source are constitutional as a proper exercise of the taxing power, *Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1. It follows that the provisions requiring other installment payments of income tax are also constitutional. In either case the amount currently collected is based on an estimate of what the total tax will be. The provisions requiring the filing of a declaration of estimated tax (Code Section 58) and imposing additions to tax for failure to file such a declaration

(Code Section 294 (d) (1) (A)) are plainly designed to effectuate collection of the estimated tax. They, too, are valid, since Congress has broad discretion in establishing procedures by which its tax exactions may be made effective, *Steward Machine Co.* v. *Davis*, 301 U. S. 548; *Helvering* v. *Davis*, 301 U. S. 619, and that discretion extends to the imposition of additional taxes by way of a civil sanction and to permitting such civil sanction to be imposed on the basis of facts determined by an administrative agency, *Helvering* v. *Mitchell*, 303 U. S. 391.

Aside from the express holdings in this and the *Walker* case, *supra*, (and see also, *Porth* v. *Brodrick*, 214 F. 2d 925 (C. A. 10)), it has repeatedly been assumed that the Code provisions relating to the estimated tax are constitutional. See, e. g., *Stephan* v. *Commissioner*, 197 F. 2d 712 (C. A. 5); *Coates* v. *Commissioner*, 234 F. 2d 459 (C. A. 8); *Clayton* v. *Commissioner*, decided January 25, 1956 (1956 P-H T. C. Memorandum Decisions, par. 56,021), affirmed, 245 F. 2d 238 (C. A. 6); *Fuller* v. *Commissioner*, 20 T. C. 308, affirmed on other grounds, 213 F. 2d 102 (C. A. 10); *Joyce* v. *Commissioner*, 25 T. C. 13; *Jones* v. *Commissioner*, 25 T. C. 1100; *Maxey* v. *Commissioner*, 26 T. C. 992. And compare the following cases upholding the constitutionality of provisions relating to the withholding of taxes: *Abney* v. *Campbell*, 206 F. 2d 836 (C. A. 5), certiorari denied, 346 U. S. 924; *Cain* v. *United States*, 211 F. 2d 375 (C. A. 5), certiorari denied, 347 U. S. 1013; *Kellems* v. *United States*, 97 F. Supp. 681 (D. Conn.).

Thus, this case, like the prior *Walker* case, *supra*, presents no serious constitutional question. The petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MAY 1958.

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